The Putting Investors First Act
Rep. Bryan Steil

Executive Summary

Thesis
Proxy advisors are fueling a movement to weaponize your retirement funds to push a woke social agenda. This hurts workers, our economy, and the returns on your hard-earned retirement savings. The Putting Investors First Act reins in the proxy advisors and disrupts the woke attack on American capitalism.

Introduction
Millions of American families rely on asset managers, investment advisors, and pension funds to save for retirement. As a result, these entities have an outsized role in determining the direction of U.S. corporations through the shareholder voting process. In order to navigate the hundreds, if not thousands, of shareholder proposals each year institutional investors have come to rely on proxy advisory firms. The market for proxy advice is dominated by two firms that carry immense sway in determining the outcome of shareholder votes. This further concentrates power over American corporate governance. In far too many cases, woke activist investors manipulate this system to steer companies to take costly positions that hurt shareholders and the U.S. economy.

Conceptual overview

Shareholders of public companies vote each year on important issues such as board appointments and a wide variety of shareholder proposals. Average retirement investors often do not vote in these elections. Instead, the institutions that manage funds on their behalf cast most shareholder votes. Many retirement investors are not aware that their shares are being voted on their behalf, often at the direction of two entities. This separation of ownership and voting has allowed activists to use the investments of hard-working Americans to further radical, left-wing political goals.

Roughly 70 percent of the outstanding shares in publicly traded U.S. companies are held by institutional investors such as mutual funds and pension funds. American families depend on these institutional investors to manage their retirement savings, including voting their shares. However, to save costs, many institutional investors rely on proxy advisory firms for recommendations on how to vote the shares under their control.

The market for proxy advice is dominated by two firms, Glass Lewis and Institutional Shareholder Services (ISS), which jointly have 97 percent market share. ISS is a German-owned company and Glass Lewis is owned by Peloton Capital, a private equity fund. Far too often, these two proxy advisory firms successfully pressure institutional investors to vote contrary to shareholder economic interests and in support of woke political initiatives.

These firms make more money if there are more shareholder proposals and, as a result, they are incentivized to encourage, including by voting for, activist proposals. At the same time, they also offer companies consulting services to address the same activist proposals they encourage. Making this even worse, the proxy advisory firms do not bear any costs and have no accountability for misguided recommendations. Retirees bear the costs of shareholder proposals and bad recommendations. Recently, with the encouragement of progressive SEC leadership, proposals have strayed into highly political areas that are beyond the expertise or authority of fund managers.

The degree of concentration in the proxy advisory firm industry coupled with the level of power wielded by the proxy advisor duopoly and their significant conflicts of interest warrants additional investor protections and Congressional oversight. The Putting Investors First Act will help to empower investors, restore transparency and accountability, and enhance competition. Sunlight is the best disinfectant and competition can produce better outcomes for American retirement investors.

Section-by-Section

Section 1: Short title

Section 2: Definitions

Section 3: Registration of proxy advisory firms

- Requires proxy advisory firms to register with the Securities and Exchange Commission (SEC).
- Registrants must provide the following information:
  - Certification that the applicant is able to consistently provide proxy advice based on accurate information
  - Explanation of the procedures and methodologies used in developing proxy voting recommendations
  - Organizational structure of the applicant
  - Code of ethics
  - Conflicts of interest relating to the ownership structure or business model of the proxy advisory firm
  - Policies and procedures to manage conflicts of interest
- Requires registrants to update their information promptly if anything previously submitted to the SEC becomes materially inaccurate.
- Requires annual recertification.

- Provides a process for the SEC to censure, deny, or suspend the registration of a proxy advisory firm for noncompliance or for association with a person convicted of a criminal offense.
- Provides a process for proxy advisors to withdraw their registration voluntarily.
- Prohibits proxy advisory firms from also offering consulting services for corporate issuers related to shareholder proposals or corporate governance.
- Proxy advisory firms that endorse proposals that violate state or federal law must pay the costs associated with those proposals, including implementation costs and penalties incurred by issuers if these proposals are enacted.
- Requires proxy advisors to make the data and information upon which recommendations will be based available to issuers at least one week before the publication of proxy voting recommendations.
- Requires proxy advisory firms (or any other firms providing voting advice) to demonstrate that their vote recommendations are in the best economic interest of shareholders, other than (1) with respect to company-sponsored proposals, such as the election of directors and the appointment of the independent auditor, or (2) where the proxy advisory firm recommended a vote consistent with the recommendation of a board of directors composed of a majority of independent directors.
- Requires the CEO, CFO, and the primary executive responsible for overseeing the compilation and dissemination of proxy voting advice to certify that their firm's recommendations are based on internal controls and procedures that are designed to ensure accurate information, account for state and federal laws, and prioritize shareholder returns.

Section 4: Duties of investment advisors, asset managers, and pension funds

- Any investment advisor, asset manager, or pension fund that retains the services of a proxy advisory firm must report annually to beneficiaries or customers (as appropriate):
    - The percentage of all votes cast on shareholder proposals that follow proxy advisor recommendations for each proxy advisory firm to which they subscribe.
    - The percentage of votes cast on ESG-related shareholder proposals that follow proxy advisor recommendations for each proxy advisory firm to which they subscribe.
    - How proxy advisor recommendations are used in making voting decisions and how these recommendations are reconciled with their fiduciary obligation to vote in the best economic interests of shareholders.
    - How frequently votes are changed when an error occurs or due to new information from issuers.
    - The degree to which investment professionals at a given firm are involved in proxy voting decisions.

- Any investment advisor or asset manager with more than $100 billion in assets under management must provide its customers with the option to provide guidance on how their shares should be voted.
- Imposes a non-waivable fiduciary duty to act in the best economic interest of customers.
- Requires disclosure regarding voting motivations:
    - With respect to every proposal on which they voted, with the exception of (1) company-sponsored proposals, such as the election of directors and the appointment of the independent auditor, or (2) where the institutional investor voted consistent with the recommendation of a board of directors composed of a majority of independent directors, institutional investors should be required to publish the economic analysis they conducted to determine that their vote is in the best economic interest of the beneficial holders.

Section 5: Transparency regarding ESG funds

- Requires any broad-based fund that advertises itself as an ESG fund to disclose on the first page of its prospectus in tabular form the 1-, 3- and 5-year annual returns and fees charged to investors in comparison with the returns and fees charged for the most readily comparable non-ESG index funds offered by the same firm.

Section 6: Resubmissions of shareholder proposals

- Allows for the exclusion of shareholder proposals addressing substantially the same subject matter as a proposal considered in the preceding 5 years (and voted on most recently in the last 3 years) if:
    - A proposal received less than 5 percent of the vote during a single vote.
    - A proposal received less than 15 percent of the vote during two votes.
    - A proposal received less than 25 percent during three votes.
- Clarifies that a proposal that raises a non-germane issue, including an issue of major social concern, is excludable.

Section 7: Prohibition on robovoting

- Defines and prohibits the practice of robovoting.
- Robovoting is defined as the practice of automatically voting in a manner consistent with the recommendations of a proxy advisory firm.

Section 8: Liability for certain failures to disclose material information

- Clarifies that a proxy advisory firm can be held liable for false or misleading statements (under rule 14a-9).

Section 9: Accountability to Congress

- Direct the SEC to study (within 180 days):
    - Consider the costs borne by issuers that are forced to respond to large numbers of politically motivated or frivolous proposals.
    - Fees paid by public companies to proxy advisory firms and affiliates, including the sources and amounts of consulting fees
    - Qualifications of staff tasked with advisory work at proxy advisory firms
    - The number of shareholder proposals that would – if passed – require issuers to violate state or federal laws and an estimate of the costs